

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

RED BARN MOTORS, INC., PLATINUM
MOTORS, INC., and MATTINGLY AUTO
SALES, INC.,

Plaintiffs,

vs.

NEXTGEAR CAPITAL, INC., f/k/a/ DEALER
SERVICES CORPORATION, COX
ENTERPRISES, INC., COX AUTOMOTIVE,
INC., and JOHN WICK

Defendants.

CASE NO. 1:14-cv-01589-TWP-DML

**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO PROCEED WITH
CLASS NOTICE TO KNOWN CLASS MEMBERS AND PROPOSED PROCEDURES FOR
PROVIDING NOTICE TO CLASS MEMBERS PURSUANT TO RULE 23(c)(2)(B)**

Plaintiffs, Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc., hereby respectfully submit this brief reply memorandum in support of their Motion to Proceed with Class Notice to Known Class Members and Proposed Procedures for Providing Notice to Class Members Pursuant to Rule 23(c)(2)(B) (Dkt. 249) (the "Motion to Proceed").

Defendants propose that class members be given 30 days to opt out of the class following notice. Plaintiffs respectfully submit that the Court should allow 60 days for class members to opt out. Plaintiffs (along with Analytics, their proposed class action administrator) believe that a 60-day opt-out period will allow sufficient time to locate updated addresses and send additional mailings in the event that certain class notices are returned due to an incorrect address. This seems likely to happen in light of the fact that some class members' claims date back as early as 2005.

In addition, Plaintiffs note that in response to their September 22 request, Defendants provided a signed declaration on October 4 relating to the list of 17,411 class members. *See* Dkt. 249, n. 1. Plaintiffs have requested dates for the Rule 30(b)(6) deposition of NextGear to discuss

that declaration as well as other class merits issues based on discovery to date. Plaintiffs reserve all rights to issue a subsequent notice to the remaining 9,980 class members who signed the 2013 contracts as well as any additional class members discovered following the initial class notice.

For the reasons set forth herein and in the Motion to Proceed, Plaintiffs respectfully request that this Court enter an Order (a) allowing Plaintiffs to proceed with class notice to the 17,411 class members whose names and contact information have been produced by Defendants and are known to Plaintiffs; and (b) approving the proposed procedures described in the Motion to Proceed and herein for providing notice to the known class members pursuant to Fed. R. Civ. P. 23(c)(2)(B).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October 2017, a copy of the foregoing was filed electronically. Notice of the filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

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